

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DERRICK LEE SMITH,

Plaintiff,

Case No. 17-cv-12082

v.

Judith E. Levy
United States District Judge

OFFICER EVERT,

Defendant.

Mag. Judge Patricia T. Morris

_____/

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS CASE

[3]

On June 23, 2017, plaintiff Derrick Lee Smith commenced this action by filing a *pro se* civil rights complaint under 42 U.S.C. § 1983. Plaintiff is a state prisoner at the Michigan Reformatory in Ionia, Michigan where defendant Evert is employed as a correctional officer. Plaintiff alleges in his complaint that Evert retaliated against him by writing invalid prison misconduct tickets about him.

On July 19, 2017, before the Court could take any action in this case, plaintiff moved to voluntarily dismiss his complaint. He states in his motion that he and Evert resolved their conflict shortly after he filed his complaint.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), a federal court may dismiss an action at the plaintiff's request "on terms that the court considers proper," and unless the order states otherwise, the dismissal is without prejudice.

The purpose of this rule “is to protect the nonmovant, here the defendant[], from unfair treatment.” *Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc.*, 583 F.3d 948, 953 (6th Cir. 2009) (citing *Grover by Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (6th Cir. 1994)).

“Generally, an abuse of discretion is found only where the defendant would suffer ‘plain legal prejudice’ as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit.” *Grover*, 33 F.3d at 718. In determining whether such prejudice would result, courts typically consider “the defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.” *Id.*

Id.

Here, it does not appear that defendant Evert would suffer any prejudice as a result of a dismissal of this case without prejudice. He has not been served with the complaint, and he has not filed a response to the complaint or an appearance by counsel. Furthermore, plaintiff promptly moved for a dismissal of this action and provided a satisfactory explanation for his request. Under the circumstances, it is not an abuse of discretion to dismiss the complaint without prejudice. Accordingly, plaintiff’s motion to dismiss this case (Dkt. 3) is GRANTED, and this case is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: August 18, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 18, 2017.

s/Shawna Burns
SHAWNA BURNS
Case Manager